

Notice of Allowability

Application No.

10/748,535

Examiner

Sung H. Pak

Applicant(s)

WEVERKA ET AL.

Art Unit

2874

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to amendment filed 3/25/2005.
2. ☒ The allowed claim(s) is/are 30,33,38 and 39.
3. ☒ The drawings filed on 29 December 2003 are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.


Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.
THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☒ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO-1449 or PTO/SB/08),
Paper No./Mail Date _____
4. ☐ Examiner's Comment Regarding Requirement for Deposit
of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☐ Interview Summary (PTO-413),
Paper No./Mail Date _____
7. ☐ Examiner's Amendment/Comment
8. ☐ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____


Sung Pak
Patent Examiner
AU 2874

DETAILED ACTION

Amendment filed 3/23/2005 has been entered since it puts the case in condition for allowance.

Response to Amendment

By this amendment, claims 30, 33, 38 and 39 are now pending. All other claims are cancelled. Claim 30 is amended to include limitations similar to those recited in claim 38. The support for the amended limitations (as well as support for claims 38 and 39) is given in paragraph 0057-0059, pages 11-12, Fig. 5A, 5B of the original specification. Therefore, no new matter was added by the amendment.

Allowable Subject Matter

Claims 30, 33, 38, 39 are allowed.

The following is an examiner's statement of reasons for allowance:

Dynamically configurable retroreflectors are known in the art. Prior office actions have cited several exemplary retroreflectors used in optical communications (see the office actions mailed 7/20/2004 and 1/11/2005). However, none of the prior art fairly teaches or suggests such a retroreflector having two flat mirrors fixed at particular included angle, defining an *intersection axis*, further having a third flat mirror that is actuatable, which defines 90 degrees included angle with the first fixed mirror (in first position) so as to reflect the transmitted beam 180 degrees to the incident path, and which (in second position) defines 90 degrees included angle with the second fixed mirror so as to reflect the transmitted beam 180 degrees to the incident path.

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As discussed in the office action mailed 1/11/2005, the closest prior art is Welch (US 5,565,686), however, the device of Welch does not define 90 degree included angle between the rotatable flat mirror and the fixed mirror when the beam retroreflection occurs (that is the beam is reflected 180 degrees to the incident beam path), as required by the claims of the instant application.

Tedesco reference (US 2001/0046350), which was cited in the previous office action in PTO-892, does disclose this arrangement, however, it is not a *prior* art, because of its filing date, and cannot be used against the instant application.

Also, Anderson (US 6,535,664 B1) also discloses this arrangement (for example, see Fig. 3). However, Anderson reference was commonly owned by the same assignee of the instant application at the time the invention was made (owned by Network Photonics, Inc). Anderson does NOT qualify as a 102(e) reference because the filing date of Anderson is Dec. 20, 2000, which is later than the effective filing date of the instant application (which is Nov. 16, 1999). In addition, double patenting rejection cannot be made, since Anderson reference does not claim, *among other things*, the “first and second flat mirrors, fixed at particular included angle with respect to one another” so that “first and second mirrors [define] an intersection axis” as claimed in the instant application. There is no obvious motivation available in the prior art (without the benefit of *impermissible hindsight* from the claims of the instant application) which would suggest that the claimed limitations (including particular structural relationships and combinations of all the recited elements of the claims) of the instant application would be an obvious variation of the Anderson’s claimed invention. Therefore, the claimed invention is patentably distinct over the claimed invention of Anderson.

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Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sung H. Pak whose telephone number is (571) 272-2353. The examiner can normally be reached on Monday- Friday, 9AM-5PM.

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Sung H. Pak
Examiner
Art Unit 2874

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